

Before the SEP 10 9 57 AM '03  
Federal Communications Commission  
Washington, D.C. 20554 DISPATCHED BY

In the Matter of Petitions For Rule Making of	)	
	)	
DALE E. REICH	)	
	)	<u>RM-10681</u>
Request Amendment of Part 13	)	
to Require licensing for Programmers of	)	
Certain Part 90, 95, and 97 Radios	)	
	)	
Request to Share Certain Part 90	)	RM-10682
Industrial / Business Pool Frequencies	)	
with MURS and FRS	)	

### MEMORANDUM OPINION AND ORDER

**Adopted: September 8, 2003**

**Released: September 10, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

#### I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we consider two related Petitions for Rule Making filed on February 10 and 11, 2003, by Dale E. Reich (Reich).<sup>1</sup> Reich requests that the Commission amend its Rules to require the licensing of some radio programmers.<sup>2</sup> Reich also requests that the Commission amend its rules to permit General Mobile Radio Service (GMRS), Family Radio Service (FRS), and Multi-Use Radio Service (MURS) users to share the Industrial/Business Radio Pool (I/B) frequencies.<sup>3</sup> Based on our review of the record in this proceeding, we conclude that issuance of a *Notice of Proposed Rulemaking* and the commencement of a proceeding regarding the captioned matters are not warranted because Reich has not made a sufficient showing to support amending the

<sup>1</sup> See Reich Petition for Rule Making, Request Amendment of Part 13 to Require licensing for Programmers of Certain Part 90, 95, and 97 Radios, RM-10681 (filed Feb 10, 2003) (*Licensing Petition*); see also Reich Petition for Rule Making, Request to Share Certain Part 90 Industrial / Business Pool Frequencies with MURS and FRS, RM-10682 (filed Feb 11, 2003) (*Sharing Petition*).

<sup>2</sup> See *Licensing Petition*.

<sup>3</sup> See *Sharing Petition*. The Consumer and Governmental Affairs Bureau sought comment on Reich's Petitions on March 19, 2003. See Dale E. Reich, Petition to Request Amendment of Part 13 to Require Licensing for Programmers of Certain Part 90, 95, and 97 Radios, *Public Notice*, RM-10681 (Consumer and Governmental Affairs Bureau Reference Center Report No. 2600, rel. Mar. 19, 2003). See also Dale E. Reich, Petition to Request to Share Certain Part 90 Industrial / Business Pool Frequencies with MURS and FRS, *Public Notice*, RM-10682 (Consumer and Governmental Affairs Bureau Reference Center Report No. 2600, rel. Mar. 19, 2003). Four parties filed comments opposing Reich's Petitions. See Industrial Telecommunications Association, Inc. Comments (ITA Comments), Vanu, Inc. Comments (Vanu Comments), Hexagram, Inc., Comments (Hexagram Comments) and Dana Hoggat Comments (Hoggat Comments).

Commission's Rules as requested. Therefore, we deny Reich's Petitions.

## II. DISCUSSION

### A. Sharing Petition

2. Reich's *Sharing Petition* requests that the Commission revise its Rules to allow FRS, MURS and GMRS users to operate on I/B frequencies: 464.5375 MHz, 464.5125 MHz, 464.5725 MHz, 469.5375 MHz, 469.5125 MHz, 469.5725 MHz, 464.500 MHz and 464.550 MHz on a secondary basis.<sup>4</sup> In addition, Reich's *Licensing Petition* requests that the Commission amend Part 13 of its Rules to require a commercial radio license for non-commercial radio services.<sup>5</sup>

3. We agree with ITA and believe the proposals set forth by Reich are inconsistent with the intended uses of these services<sup>6</sup> because Reich's proposals, if implemented, would require interoperability between services designed for personal use with services designed for business use.<sup>7</sup> GMRS service is a short-distance communications service to facilitate the activities of licensees and their immediate family.<sup>8</sup> FRS is "a private, two-way, very short-distance voice communications service for facilitating family and group activities."<sup>9</sup> Similarly, MURS is "a private, two-way, short distance voice, data, or image communications service for personal or business activities of the *general public*."<sup>10</sup> On the other hand, the class of users of the I/B frequencies "covers the licensing of the radio communications of entities engaged in commercial activities, engaged in clergy activities, operating educational, philanthropic, or ecclesiastical institutions, or operating hospitals, clinics, or medical associations."<sup>11</sup>

4. The Commission allocated services such as FRS and MURS for the general public to use and thus these services are intended for a different use than the I/B services, which are intended primarily for business use. Based on the information before us, we can not conclude that the public interest would be furthered by making these services interoperable as requested by Reich. We agree with ITA that having the personal use licensed by rule operations in the same band as the I/B operations presents concerns regarding the potential for harmful interference.<sup>12</sup> We find it significant that Reich's *Sharing Petition* does not set forth any interference protections. Accordingly, we conclude that the requested changes to the Commission's Rules are not necessary or desirable under the circumstances presented.

### B. Licensing Petition

5. As noted above, Reich seeks to require radio programmers to obtain a license from the Commission. Reich believes there is an epidemic of radios with unauthorized frequencies programmed into them.<sup>13</sup> We are not persuaded by the record before us that having the licensing requirements for

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<sup>4</sup> See *Sharing Petition*.

<sup>5</sup> See *Licensing Petition*.

<sup>6</sup> See ITA Comments at 2-3.

<sup>7</sup> See 47 C.F.R. §§ 90.1 – 90.1103.

<sup>8</sup> See 47 C.F.R. § 95.1(a).

<sup>9</sup> 47 C.F.R. § 95.401(b)

<sup>10</sup> 47 C.F.R. § 95.401(f) (emphasis added).

<sup>11</sup> 47 C.F.R. § 90.31.

<sup>12</sup> ITA Comments at 5.

<sup>13</sup> See *Licensing Petition*.

commercial operators in Part 13 of the Commission's Rules<sup>14</sup> changed to apply to radio equipment intended for the personal or business communications covered by the FRS or MURS rules is appropriate. For example, it would not be in the public interest to impose an exam requirement on a consumer purchasing a radio, enabled in the FRS or MURS, at his or her local electronics retailer.<sup>15</sup> Finally, Reich also asserts that unauthorized frequency programming of business radios has caused trouble to police, fire, and EMS rescue over the years.<sup>16</sup> In this respect, we note that no law enforcement agency filed comments in support of Reich's *Licensing Petition*.

### III. CONCLUSION AND ORDERING CLAUSES

6. Reich's Petitions assume problems exist, however neither petition demonstrates that a problem exists nor do they demonstrate how the recommended actions would address the purported problems that Reich describes. In light of the foregoing, we conclude that Reich did not demonstrate that any changes to the Commission's Rules are needed at this time. The proposed rule changes in Reich's Petitions are not in the public interest and do not demonstrate how the public will benefit from such rule changes. Additionally, Reich's Petitions do not set forth the text or substance of any proposed rule change. Consequently, we dismiss Reich's Petitions.

7. ACCORDINGLY, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.401(c) and (e) of the Commission's Rules, 47 C.F.R. §§ 1.401(c) and (e), the Petitions for Rule Making filed by Dale E. Reich ARE DENIED.

8. This action is taken pursuant to delegated authority granted under the provisions of Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a) and 0.331.

#### FEDERAL COMMUNICATIONS COMMISSION



D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunication Bureau

<sup>14</sup> See 47 C.F.R. § 13.1 -13.217.

<sup>15</sup> See 47 C.F.R. §13.211.

<sup>16</sup> See *Licensing Petition*.